

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A
SHORELINE VARIANCE PERMIT
ISSUED BY THURSTON COUNTY TO
DUFFY E. SLATER, and DENIED
BY THE STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

DUFFY E. SLATER and
THURSTON COUNTY

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,
and LARS NASHLUND and
STEPHANIE SCEVA

Respondents.

SHB No. 87-15

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

This matter, the request for review of a shoreline variance permit issued by Thurston County and denied by the Washington State Department of Ecology, came on for hearing before the Shorelines Hearings Board; Lawrence J. Faulk (Presiding), Wick Dufford, Chairman, Judith A. Bendor, Bob Rose, Ronald T. Bailey and Bill Mahan, Members, convened at Lacey, Washington, on September 4, 1987.

1 In the hearing on the merits appellant Duffy E. Slater was
2 represented by William Metcalf, Attorney At Law. Appellant Thurston
3 County did not appear. Respondents Lars Nashlund and Stephanie Sceva
4 were represented by Phyllis MacLeod, Attorney At Law. Respondent
5 Department of Ecology appeared by Allen T. Miller, Jr., Assistant
6 Attorney General. The proceedings were recorded by Betty Koharski,
7 court reporter with Gene Barker & Associates.

8 Witnesses were sworn and testified. Exhibits were examined. From
9 testimony heard and exhibits examined, the Shorelines Hearings Board
10 makes these

11 FINDINGS OF FACT

12 I

13 This matter arises on the shoreline of Budd Inlet in Thurston
14 County, a shoreline designated as rural by the Thurston County
15 Shoreline Master Program, (TCSMP).

17 II

18 The shoreline in this area has three tiers. The first is the
19 tideland which extends to a bulkhead. The second tier is a narrow
20 shelf extending back to a steep bank 30 to 40 feet in height. The
21 third tier, on top of the bank, contains the roadway serving the home
22 in question.

III

In 1985 Appellant purchased the home which was built on the shelf portion of the shoreline. It then had a 6'x24' elevated deck which pre-dates TCSMP the setback requirement. In 1986 appellant expanded this to an elevated deck of approximately 18'x24' (430 square feet), which is the subject of this appeal.

IV

The new deck has been constructed closer to the shoreline than is permitted by the Thurston County Shoreline Master Program (TCSMP). The deck was extended so that its waterward edge is from 13 to 16 feet from the ordinary high water mark. This work was planned and completed without application to Thurston County for a shoreline variance permit.

V

Upon discovering the shoreline construction, Thurston County correctly determined that the site is within a rural designation. This designation, in turn, requires structures to be set back 50 feet from the ordinary high water mark (the bulkhead in this case). Consequently, Thurston County advised appellant to seek an after-the-fact shoreline variance. Appellant did so, requesting permission to retain what was built. On December 22, 1986, the Thurston County Hearing Examiner approved the shoreline variance

1 request for the 18'x24' expanded deck. This decision was re-affirmed
2 January 20, 1987. On February 5, 1987 Thurston County issued the
3 shoreline variance.

4 On March 9, 1987 Department of Ecology denied the variance permit
5 as granted by Thurston County. From this decision, appellant appealed
6 to this Board on April 8, 1987. On May 1, 1987 the appeal was
7 certified by Ecology and the Attorney General's office. On May 5,
8 1987, a pre-hearing conference was held. The hearing on the merits
9 took place on September 4, 1987.

10 VI

11 The neighborhood is characterized by single family residences
12 located to the north, south and at a higher elevation to the west.
13 Immediately to the north is the property of respondents Lars Nashland
14 and Stephanie Sceva. The Nashland-Sceva home is designed to conform
15 to the 50-foot building setback.

16 VII

17 Appellant maintains that a prior deck, about the same size as the
18 new deck, was partially removed leaving only the 6'x24' deck when he
19 came into possession in 1985. The size of this prior deck and indeed
20 its existence are the subject of dispute.

21 We find that any prior deck (over and above the 6'x24' deck) had
22 ceased to exist and was abandoned by 1981. As noted, appellant's
23 project began in 1986.

VIII

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The TCSMP setback requirement applicable to appellant's lot (a rural environment) forbids all of appellant's reconstruction. A shoreline variance must be obtained for reconstruction of the deck to be lawful.

II

The applicable criteria for approval of a shoreline variance are stated in the permit regulations of the Department of Ecology at WAC 173-14-150. These are incorporated in the TCSMP Sec. VII, pp. 85-86. WAC 173-14-150 states:

The purpose of a variance permit is strictly limited to granting relief to specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the master program would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

(1) Variance permits should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated

1 in RC 90.58.020. In all instances
2 extraordinary circumstances should be shown and
3 the public interest shall suffer no substantial
4 detrimental effect.

5 (2) Variance permits for development that
6 will be located landward of the ordinary high
7 water mark (OHWM), as defined in RCW
8 90.58.030(2)(b), except within marshes, bogs,
9 or swamps as designated by the department
10 pursuant to chapter 173-22 WAC, may be
11 authorized provided the applicant can
12 demonstrate all of the following:

13 (a) That the strict application of the
14 bulk, dimensional or performance standards set
15 forth in the applicable master program
16 precludes or significantly interferes with a
17 reasonable use of the property.

18 (b) That the hardship described in WAC
19 173-14-150(2)(a) above is specifically related
20 to the property, and is the result of unique
21 conditions such as irregular lot shape, size,
22 or natural features and the application of the
23 master program, and not, for example, from deed
24 restrictions or the applicant's own actions.

25 (c) That the design of the project will be
26 compatible with other permitted activities in
27 the area and will not cause adverse effects to
adjacent properties or the shoreline
environment designation.

(d) That the requested variance will not
constitute a grant of special privilege not
enjoyed by the other properties in the area,
and will be the minimum necessary to afford
relief.

(e) That the public interest will suffer no
substantial detrimental effect.

(3)...

(4) In the granting of all variance
permits, consideration shall be given to the
cumulative impact of additional requests for
like actions in the area. For example, if
variances were granted to other developments in
the area where similar circumstances exist the
total of the variances should also remain
consistent with the policies of RCW 90.58.020
and should not produce substantial adverse
effects to the shoreline environment.

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III

Requisite hardship has not been shown in light of over 20 years of residential use of the property without the expanded deck. The expanded deck is inconsistent with the first paragraph of WAC 173-14-150.

IV

Appellant is not precluded from a reasonable use of the property nor is the same unreasonably interfered with because the applicable master program, applied without variance, allows the pre-existing and reasonable 6'x24' deck. The expanded deck is a considerable amenity, but is not necessary for the residential use of the property. See 4101 Beach Drive Homeowners' Association v. Seattle, SHB 84-49 (1984). Appellant has several other places on his property from which to view the water.

V

The construction of structures within the shoreline without prior approval is not condoned. The applicant takes a special risk in constructing without approval, because that which was built may have to be removed.

VI

Appellant has sought to avoid the variance criteria altogether by maintaining that his project is just the reconstruction of a prior non-conforming use. Under the TCSMP the reconstruction of a

1 non-conforming structure must occur within one year after its partial
2 destruction TCSMP, Section I, p.9, Items 5 and 7.

3 We conclude that the project at issue took place longer than one
4 year after the partial destruction of any prior structure it replaced
5 and that, therefore, the TCSMP provision for reconstruction of a
6 non-conforming structure does not apply.

7 VII

8 Any Finding of Fact which should be deemed a Conclusion of Law is
9 hereby adopted as such.

10 From these Conclusions the Board enters this
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ORDER


The disapproval of a shoreline variance permit to Duffy Slater for the expanded deck by the Department of Ecology is affirmed. The pre-existing 6'x24' deck is allowed.


DATED this 6th day of November, 1987.

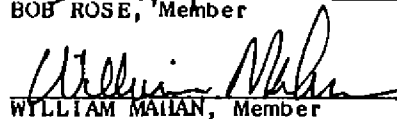
SHORELINES HEARINGS BOARD

 11/5/87
LAWRENCE J. FAULK, Presiding


WICK DUFFORD, Chairman


JUDITH A. BENDOR, Member


BOB ROSE, Member


WILLIAM MAHAN, Member


RONALD T. BAILEY, Member